THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.17124 OF 2006

ORDER:

This writ petition is filed seeking a declaration that the proceedings of the 1st respondent-Commissioner of Prohibition and Excise, Andhra Pradesh, Hyderabad, dated 10.8.2006, whereby permitting the 3rd respondent herein, to shift the licensed premises from Ward No.15, Madanapalle Municipality to Ward No.31, Madanapalle arbitrary and illegal.

The petitioner is a licensee for sale of IML and Indian made Foreign liquor by shop under the provisions of Andhra Pradesh Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2005 (for short the "Rules 2005") for the year 2006-08. He was granted the said licence pursuant to the notification dated 27.5.2006 issued under Rule 5 of the Rules in respect of the entire Chittoor District including Madanapalle Municipality. Being the highest bidder in respect of the shop notified at Ward No.31, the petitioner was granted a licence on compliance with all the statutory requirements. The 3rd respondent also participated in the said auction so far as the shop in Ward No.21 and was declared as the successful bidder in respect of the shop in Ward No.15/2 of Madanapalle Municipality. Accordingly, he commenced the business in the premises No.9/154, Ward No.15. However, 15 days after commencement of the business, it appears that the 3rd respondent made an application to the respondents 1 and 2 seeking permission for shifting his shop from Ward No.15 to Ward No.31. Having come to know of the same, the petitioner submitted his objections dated 17.7.2006. Alleging that the said objections were not being considered, the petitioner earlier filed W.P.No.15696 of 2006, in which this Court by order 28.7.2006 directed respondents 1 and 2 to take into consideration the objections raised by

the petitioner. However, the 1st respondent without proper appreciation of any of the objections raised by the petitioner, passed the impugned order dated 10.8.2006, permitting shifting of the licensed premises of the 3rd respondent from Ward No.15 to Ward No.31. Hence, this writ petition contending *inter alia,* that the impugned order is not only contrary to Rule 29(3) of the Rules, but the same was also illegal, since the same was passed without application of mind and on extraneous considerations due to political pressures.

I have heard the learned counsel for both the parties and peruse the material on record.

Rule 29 of the Rules, which provides for shifting of the licensed premises as it stood initially under G.O.Rt.No.998 dated 24.5.2005 runs as under:

29.Sale permitted at the licensed premises only:-

(1) The leaseholder shall sell the liquor only at the premises specified in the licence.

(2) No change or alteration of the licensed premises shall be made nor the licensed premises shifted elsewhere.

(3) Shifting of the licensed premises may be permitted for valid reasons and subject to conditions as may be specified by the Commissioner of Proh. & Excise within the ***same area/locality*** *where it was originally established subject to payment of Rs.10,000/- as fee."*

Subsequently, by G.O.Ms.No.1878, Revenue (Ex.II) Department, dated 8-11-2005, sub-rule (3) of Rule 29 was substituted as under:

"(3) Shifting of the licensed premises may be permitted for valid reasons and subject to conditions as may be specified by the Commissioner of Prohibition & Excise, subject to payment of Rs.10,000/-."

There was yet another amendment to sub-rule (3) of Rule 29 vide G.O.Ms.No.598 dated 26.5.2006 thereby inserting a proviso as under:

"(3) *Shifting of the licensed premises may be permitted for valid reasons within the notified area and subject to conditions as may be specified by the Commissioner subject to payment of one per cent of the lese amount or Rs.25,000/- whichever is higher;*

Provided that the Commissioner may consider and permit for valid reasons shifting of the licensed premises, notwithstanding the notified area of the licensed premises, within the same Mandal or Municipality or Municipal Corporation, without affecting the total number of notified shops in the said Mandal or Municipality or Municipal Corporation subject to condition as specified by the Commissioner and subject to payment of one percent of lease amount or Rs.25,000/- whichever is higher".

Thus, as per sub-rule (3) of Rule 29, as it stands with effect from 26.5.2006, the Commissioner is competent to consider and permit shifting of the licensed premises for valid reasons without regard to the notified area of the licensed premises. However, shifting shall be within the same Mandal or Municipality or Municipal Corporation without affecting the total number of notified shops in the said Mandal or Municipality or Municipal Corporation.

The validity of Rule 29(3) of the Rules, as amended by G.O.Ms.No.1878 dated 8.11.2005 was questioned in W.P.No.26957 of 2005 contending that the same was *ultra vires* the legislative competence of the State under Section 72 of the A.P. Excise Act, 1968 (for short "the Act"). It was contended that the impugned Rule conferred unguided and unfettered power on the Commissioner to permit shifting of retail shop, which would amount to taking away the vested right of existing retail licensees. This Court having considered all the relevant aspects, though declined to hold that Rule 29 (3) was *ultra vires* the legislative power under Section 72 of the Act, or unconstitutional, and that any unguided or unfettered powers were conferred on the Commissioner of Prohibition and Excise, held that on a combined reading of Rules 3,4 and 5 of the rules, lease of right to sell liquor by shop by way of public auction can be granted only in respect of shops fixed by the Commissioner of Prohibition and Excise in the particular area/locality identified by him in the notification and, therefore, the power conferred under sub-rule (3) of Rule 29 cannot be interpreted as empowering the Commissioner to permit shifting of the shop to a locality/area other than that was identified by the Commissioner in the notification. It was also held as under:

> "The deletion of the words '**within the same area/locality where it was originally established**' by itself did not render the power conferred on the Commissioner of Prohibition & Excise, arbitrary or unguided. However, in a given case if the authority is found to have exercised his discretion contrary to the scheme enunciated under Rules 3, 4 and 5 of the Rules, such decision can be struck down as arbitrary and illegal."

It is to be noted that subsequent to the said order in W.P.No.26957 of 2005, sub-rule (3) of Rule 29 of the Rules was amended by G.O.Ms.No.598 dated 26.5.2006 inserting the proviso, which was extracted above. As already noted, the proviso empowers the Commissioner to permit shifting of the licensed premises within the same Mandal or Municipality or Municipal Corporation notwithstanding the notified area of the licensed premises. The said amendment was brought in on 26.5.2006 itself, whereas the notification inviting tenders for auction of grant of lease by shop under Rule 5 of the Rules was issued subsequently on 27.5.2006. Hence, all the participants in the auction are bound by the amended rule and having participated in the auction without raising any objection, it is not open to them now to contend that the shifting of the shop from one Ward to another Ward would affect their business. So long as shifting is not effected within the Mandal or Municipality or Municipal Corporation and is not in violation of the other conditions specified under the proviso to rule 29(3), the petitioner cannot make out any grievance. It is relevant to note that the validity of Rule 29(3), as amended by G.O.Ms.No.598 dated 26.5.2006, is not under challenge in this writ petition, but only the impugned order passed in exercise of the said power is sought to be declared as arbitrary and illegal. Having regard to the power conferred under Rule 29(3), as it stood by the date of notification dated 27.5.2006, the impugned order cannot be held to be arbitrary or illegal on any of the grounds urged in the writ petition.

Admittedly, in the case on hand, the shifting of the licensed premises ordered had not affected the total number of notified shops in Madanapalle Municipality and the shifting was permitted within the

same Municipality. Hence, it is well within the powers conferred under the proviso to Rule 29(3) as amended under G.O.Ms.No.598 dated 26.5.2006. The only contention raised by the petitioner that the power exercised by the 1st respondent was not for valid reasons is also untenable and cannot be accepted in the absence of any allegation of *mala* fides against any of the respondents. As a matter of fact, in the counter-affidavit it has been explained that Ward No.31 is a busy commercial area, having good potentiality and that the objection raised by the petitioner that the shifting would affect his business is without any basis.

Hence, I am unable to hold that the impugned order suffers from any infirmity warranting interference by this Court in exercise of the jurisdiction under Article 226 of the Constitution of India.

Accordingly, the writ petition is dismissed. No costs.

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(G. ROHINI, J.

26th October, 2006.
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THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.17124 OF 2006

26th October, 2006.

Between:

D.R. Sridhar Naidu. .. Petitioner.

And

The Commissioner of Prohibition and Excise.
Andhra Pradesh, Hyderabad and others. .. Respondents.